

§ 821.48 Briefs and oral argument.

(a) *Appeal brief.* Except as provided in § 821.57(b) with respect to emergency proceedings, each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party, where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

(b) *Form and content of appeal brief.* (1) In addition to the general form requirements for documents set forth in § 821.7(c)(2), the appeal brief must be typewritten, double-spaced, on 8½-by-11 inch paper. The appeal brief shall set forth the name, address and telephone number of the party, or the attorney or other representative filing the brief on the party's behalf. No appeal brief may contain more than 35 pages of text without prior leave of the General Counsel, upon a showing of good cause.

(2) The appeal brief shall enumerate the appealing party's objections to the law judge's initial decision or appealable order, and shall state the reasons for such objections, including any legal precedent relied upon in support thereof.

(3) Any error contained in the initial decision which is not objected to in the appeal brief may be deemed waived.

(c) *Reply brief.* Any other party to the proceeding may file a brief in reply to the appeal brief within 30 days after the date on which the appeal brief was served on that party (except as provided in § 821.57(b) with respect to emergency proceedings). A copy of the reply brief shall simultaneously be served on the appealing party and any other parties to the proceeding. The form requirements governing the appeal brief set forth in paragraph (b)(1) also apply to the reply brief.

(d) *Other filings.* Subsequent to the filing of the appeal and reply briefs, the parties may file citations to supplemental authorities. This procedure may be used only for identifying new and relevant legal authority, and not

to correct omissions in briefing or to respond to a reply brief. No argument may be included with such a filing. Such filing shall include a reference to the page of the brief to which the cited legal authority pertains. Any response shall be filed within 10 days of the date of service of the supplemental filing, and shall be similarly limited in scope. With these exceptions, the parties may make no other submissions, except by leave of the Board, upon a showing of good cause.

(e) *Oral argument.* Oral argument before the Board will not be held in proceedings under this part unless the Board, on motion of a party or on its own initiative, determines that oral argument is needed.

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative and substantial evidence?

(2) Are conclusions made in accordance with law, precedent and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect, or that his or her initial decision or order should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's initial decision or order, or may remand the proceeding for any such purpose as the Board may deem necessary.

§ 821.50 Petition for rehearing, reargument, reconsideration or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition the Board for rehearing, reargument, reconsideration or modification of a Board order on appeal from a law judge's initial decision or order. An initial decision or appealable order of a law judge that has become final because no timely appeal was taken therefrom may not be the subject of a petition under this section.

(b) *Timing and service.* The petition must be filed with the Board, and simultaneously served on the other parties, within 30 days after the date of

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service of the Board's order on appeal from the law judge's initial decision or order.

(c) *Content.* The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

(d) *Repetitious petitions.* Repetitious petitions will not be entertained by the Board, and will be summarily dismissed.

(e) *Reply to petition.* Any other party to the proceeding may file a reply to the petition within 15 days after the date on which the petition was served on that party. A copy of such reply shall simultaneously be served on the petitioner and any other parties to the proceeding.

(f) *Stay of effective date of Board's order.* The filing of a petition under this section shall operate to stay the effective date of the Board's order, unless the Board directs otherwise.

Subpart I—Special Rules Applicable to Proceedings Involving Emergency and Other Immediately Effective Orders

§ 821.52 General.

(a) *Applicability.* This subpart shall apply to any order issued by the Administrator under 49 U.S.C. 44709 as an emergency order, as an order not designated as an emergency order but later amended to be an emergency order, and any order designated as immediately effective or effective immediately.

(b) *Effective date of emergency.* The procedure set forth herein shall apply as of the date on which written advice of the emergency character of the Administrator's order is received and docketed by the Board.

(c) *Computation of time.* Time shall be computed in accordance with the provisions of § 821.10.

(d) *Waiver.* Except as provided in § 821.54(f), or where the law judge or the Board determines that it would unduly burden another party or the Board, a certificate holder (respondent) affected by an emergency or other immediately effective order of the Administrator may, at any time after filing an appeal from such an order, waive the applicability of the accelerated time limits of this subpart; however, such a waiver shall not serve to lengthen any period of time for doing an act prescribed by this subpart which expired before the date on which the waiver was made.

§ 821.53 Appeal.

(a) *Time within which to file appeal.* An appeal from an emergency or other immediately effective order of the Administrator must be filed within 10 days after the date on which the Administrator's order was served on the respondent. The respondent shall simultaneously serve a copy of the appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the certificate or certificates affected and indicate that an emergency or other immediately effective order of the Administrator is being appealed.

§ 821.54 Petition for review of Administrator's determination of emergency.

(a) *Time within which to file petition.* A respondent may, within 2 days after the date of receipt of an emergency or other immediately effective order of the Administrator, file with the Board a petition for review of the Administrator's determination that an emergency, requiring the order to be effective immediately, exists. This 2-day time limit is statutory and the Board has no authority to extend it. If the respondent has not previously filed an appeal from the Administrator's emergency or other immediately effective order, the petition shall also be considered a simultaneously filed appeal from the order under § 821.53.

(b) *Form, content and service of petition.* The petition may be in letter